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IN THE

Supreme Court of the United States

OCTOBER TERM 1945

PETER A. BUHL, LESTER W. BLUHM, ABEL A. GARFAIN, ISADORE LUPER, HARRY I. HOROWITZ, IRVING C. ROSENBERG, NATHAN ROSENZWEIG, CHARLES B. SALINGER, IRVING N. SOLOWAY and HARRY W. WEINERMAN, on behalf of themselves and all other licensed podiatrists and chiropodists in the State of New York, similarly situated,

Petitioners,

—against—

THE UNIVERSITY OF THE STATE OF NEW YORK, THOMAS J. MANGAN, WILLIAM J. WALLIN, ROLAND B. WOODWARD, WILLIAM LELAND THOMPSON, JOHN LORD O'BRIAN, GEORGE HOPKINS BOND, OWEN D. YOUNG, SUSAN BRANDEIS, C. C. MOLLENHAUER, W. KINGSLAND MACY, JOHN P. MYERS and STANLEY BRADY, as members of the Board of Regents of the University of the State of New York,

*Respondents.***PETITION FOR WRIT OF CERTIORARI
AND BRIEF IN SUPPORT THEREOF**

JACOB W. FRIEDMAN,
Attorney for Petitioners.



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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPREME COURT, THIRD DEPARTMENT, OF THE STATE OF NEW YORK

To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioners, Peter A. Buhl, Lester W. Bluhm, Abel A. Garfain, Isadore Luper, Harry I. Horowitz, Irving C. Rosenberg, Nathan Rosenzweig, Charles B. Salinger, Irving N. Soloway and Harry W. Weinerman, on behalf of themselves and all other licensed podiatrists and chiropodists in the State of New York, similarly situated, respectfully pray for a writ of certiorari to the Appellate Division of the Supreme Court, Third Department, of the State of New York, the highest court of the State in which a decision could be had, to review a determination of that Court, rendered on December 29, 1944, affirming a judgment and order of the Supreme Court, Albany County, New York, which judgment and order granted judgment for the respondents and dismissed the complaint of the petitioners, in an action for a declaratory judgment involving the power of the Board of Regents of the University of the State of New York, to promulgate and enforce a certain regulation concerning the practice of podiatry.

Statement of Matters Involved

This action was instituted for a declaratory judgment, decreeing the rights of the petitioners, all duly licensed podiatrists in the State of New York, under the provisions of law as set forth in Article 53 of the Education Law of the State of New York, and particularly with respect to Regulation #1 promulgated by the respondents and its enforcement; restraining the respondents from publishing and circulating the said Regulation #1; directing the respondents to cancel and annul the said Regulation #1; that the petitioners have the right to use the title "Doctor" or "Dr." with the qualification "podiatrist" or "chiropodist" and enjoining the respondents from disciplining petitioners and all other podiatrists and chiropodists similarly situated by reason of the use by them of the title "Doctor" or "Dr." with the qualification "podiatrist" or "chiropodist."

The position of the petitioners is that the respondents had and have no power under the provisions of the Education Law to enact such regulation; that such regulation violated and is contrary to the provisions of Article XIV of the Constitution of the United States in that it deprived the petitioners of a right and property without due process of law, and that it was discriminatory in denying the petitioners the equal protection of the laws.

The regulation under attack is as follows (R. 12, 21):

"1. Fraud and deceit. Fraud and deceit in the practice of podiatry under the Education Law shall include the following:

a. The use of the title 'doctor' with or without the qualification 'podiatrist' or 'chiropodist' by a licensed podiatrist unless he has earned the degree of doctor of podiatry or doctor of chiropody in accordance with the provisions of Section 1402 of the Education Law; use by any podiatrist or chiropodist authorized to practice under the Education Law of New York State of the title 'doctor' or any abbreviation thereof without the qualification 'podiatrist' or 'chiropodist.'"

Section 1402 of the Education Law of the State of New York states (so far as is pertinent here):

"Sec. 1402—Examinations

No person shall engage in the practice of podiatry in this State except as hereinafter provided, unless he shall have been duly licensed to practice as provided by law."

Petitioners instituted action for a declaratory judgment, as above set forth, in the Supreme Court, Albany County, State of New York. The constitutional question involved

was asserted there (R. 15) but judgment was granted the respondents, dismissing the petitioners' complaint. Opinion of Court (R. 23).

From such judgment and order (R. 6, 8) petitioners duly appealed to the Appellate Division of the Supreme Court, Third Department, State of New York (R. 4), where the constitutional question involved was again pressed. The judgment and order appealed from were affirmed (R. 32, 34). Application was made to said Appellate Division for leave to appeal to the Court of Appeals, but such application was denied (R. 36). Application was then duly made to the Court of Appeals for leave to appeal to that Court, and such application was denied by that Court (R. 38). Accordingly the Appellate Division of the Supreme Court, Third Department, State of New York, was the highest court of the State of New York, in which a decision could be had.

As indicated above, the constitutional question was presented in the petitioner's complaint (R. 15), and pressed in the lower Court and in the Appellate Court, as is shown by the language in the opinion of Mr. Justice Bliss of the Appellate Division (R. 31).

Question Presented

Is Regulation #1 defining "fraud and deceit" as set forth in Section 1412 of the Education Law of the State of New York (R. 13-14) in so far as it prohibits petitioners, all duly licensed to practice podiatry and chiropody, from using the title "Doctor" or "Dr." with the qualification "podiatrist" or "chiropodist," and subjecting them to disciplinary action involving the revocation, suspension or annulment of the license and registration of a podiatrist, in contravention of the Constitution of the United States, Amendment XIV, Section 1?

Reasons for Allowance of Writ

1—The determinations of the Courts of the State of New York, upholding the validity of the regulation under attack, are repugnant to the provisions of the Constitution of the United States, Article XIV, Section 1, granting all persons the equal protection of the laws. They determine, that although the Education Law of the State of New York makes no such distinction, the Board of Regents may discriminate against licensed podiatrists who have no academic or collegiate degree of "doctor of podiatry" or "doctor of chiropody."

2—The determinations of the Courts of the State of New York, upholding the validity of the regulation under attack, are repugnant to the provisions of the Constitution of the United States, Article XIV, Section 1, that no State shall deprive any person of any right or property without due process of law. The Education Law of the State of New York does not prohibit duly licensed podiatrists from using the title "Doctor" or "Dr." qualified by "podiatrist" or "chiropodist", and the Board of Regents cannot create such prohibition, and thus deprive petitioners of a right without due process of law.

WHEREFORE your petitioners pray that a writ of certiorari issue to the Appellate Division of the Supreme Court, Third Department, State of New York, commanding said Court to certify and send to this Court, on a date to be designated, a full and complete transcript of the record of all proceedings of said Appellate Division of the Supreme Court, Third Department, State of New York, had in this cause, to the end that this cause may be reviewed and determined by this Court; that the determination of the Appellate Division of the Supreme Court, Third Department,

State of New York, be reversed, and that petitioners be granted such other, further and different relief as may seem proper.

Dated, New York, August 10, 1945.

JACOB W. FRIEDMAN,
Attorney for Petitioners.

